IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 190 of 1986

in

SPECIAL CIVIL APPLICATIONNo 3396 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

S.R. PANDYA

Appearance:

1. LETTERS PATENT APPEAL No. 190 of 1986

MR MS RAO, AGP for the Appellants

NOTICE UNSERVED for Respondent

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and

HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 08/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. The appellants had challenged the order of the learned Single Judge, allowing the petition of the respondent by holding that the petitioner was bypassed, applying wrong criterion of promotion in the year 1978 and directing that the deemed date should be granted to him of promotion to the higher post of Head Constable Gr.II from 4.5.78 with consequential benefits.

#. The learned counsel for the appellants contended that the learned Single Judge had virtually considered the question of fitness of the respondent for promotion and assumed the function of the Departmental Promotion Committee. It was argued that the respondent was considered and not found fit for promotion as Head Constable Gr. II on the basis of the relevant material on record and it was not open for the Court to sit in appeal with over decision of the Competent Authority.

#. According to the respondent, he was entitled to be promoted in 1978 as Head Constable, but was wrongly bypassed. The respondent (original petitioner) challenged the order dated 20th June, 1984 passed by the appellants holding that he was positively unfit for promotion to the post of Head Constable. That order was made after directions were given in his earlier Special Civil Application No. 166 of 1979 on 1.2.1981, to consider his case on the criterion of seniority-cum-merit. The Departmental Promotion Committee considered his case and on the basis of the record, found that he was positively unfit at the time when he was due for promotion in 1978.

#. The record which was produced before the learned Single Judge disclosed that he was in fact acquitted by the High Court in the criminal case and, therefore, his earlier conviction could not have been taken into account for holding him unfit for promotion. Furthermore, his service record for the yeas 1975, 1976 and 1977 did not disclose any positive demerit on the principle of the seniority-cum-merit by any reasonable approach.

#. In our opinion, the Departmental Promotion Committee did not apply the criterion of seniority-cum-merit on the basis of which he could not have been discarded as positively unfit, since his relevant service record for

three years immediately prior to his being considered for promotion, merely reflected one warning for slackness. The respondent could not have been expected to go on filing false prohibition cases, because, as rightly observed by the learned Single Judge, such crimes may not be rampant in the locality in which he was posted on duty. Therefore, irrelevant considerations had gone into the decision making process adopted by the Departmental Promotion Committee. We therefore, find ourselves in complete agreement with the reasoning adopted by the learned Single Judge and the conclusions reached for allowing the petition of the respondent. The appeal is therefore dismissed with no order as to costs.

[R.K. ABICHANDANI, J.]

[K.M. MEHTA, J.]
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